

JPA File No.: 06-1221  
AG Contract No.: KR07-0112TRN  
Project No.:  
Project: SR 195  
Section: Toh Vee Road MP190.40  
TRACS No.: HX19801C  
Budget Source Item No.: 71207

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
FORT MCDOWELL YAVAPAI NATION

**THIS AGREEMENT** is entered into this date April 4, 2007, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the FORT MCDOWELL YAVAPAI NATION, acting by and through its Tribal Council and (the "Nation"). The State and the Tribe are collectively referred to as "Parties".

### I. RECITALS

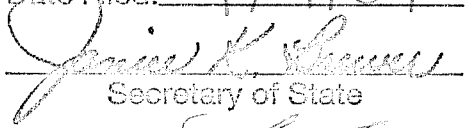

1. The State is empowered by Arizona Revised Statutes § 48-201 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Nation is empowered by its Tribal Council to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Tribe.

3. The State and the Nation agree to participate in the design, construction and maintenance of a new warranted traffic signal and intersection improvements, hereinafter referred to as the "Project". The Project is currently estimated at \$290,000.00, including design, construction engineering and contingencies. The Project will be at the intersection of SR 87 and Toh Vee Road, Milepost "MP" 190.40. The signal construction costs include a new Traffic Signal to be constructed. It will use video detection with advanced loop detectors. No preemption equipment is planned for the new signal. The intersection is a 3 leg intersection being constructed to allow for a future 4<sup>th</sup> leg. The State will reimburse the Nation when construction is complete. The State will also provide full maintenance of the traffic signal. The Nation will provide and install the traffic signal and be responsible for obtaining the electrical power to operate the traffic signal

**THEREFORE**, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

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NO. 20831  
Filed with the Secretary of State  
Date Filed: 4/4/07  
  
Secretary of State  
By: 

## **II. SCOPE OF WORK**

### 1. The State shall:

a. Upon completion of the Project, perform the final inspection and notify the Nation in writing that the Project has been constructed in accordance with the project documents and the Project has been satisfactorily completed.

b. Upon completion and acceptance of the Project by the State, provide full maintenance to the Traffic signal, all at the State's expense.

c. Upon execution of this Agreement, provide the Nation with an invoice for the State's estimated share of the Project, currently estimated at 290,000.00. The Nation is funding a 100% share of the traffic signal video detection with advanced loop detectors, plus a 50% share of the Traffic Signal construction. Once the Project costs have been finalized, the State will either invoice or reimburse the Nation for the difference between estimated and actual costs.

### 2. The Nation shall:

a. Prepare and provide design plans, specifications and other such documents and services required for construction bidding and construction of the Project, and submit same to the State for concurrence.

b. Review the design documents required for construction of the Project, and provide comments to the State, as appropriate.

c. Call for bids and award one or more construction contract(s) for the Project. Administer same and make all payments to the contractor(s). Be responsible for contractor claims for additional compensation caused by Project delays attributable to the Nation.

d. In the event unforeseen conditions or circumstance increase the cost of said work necessitated by a change in the Project's Scope of Work, such additional costs shall require prior approval of the State. All costs attributable to any engineering change orders requested by the Nation, shall be the sole responsibility of the Nation

e. Upon completion, approval and acceptance of the Project and on behalf of the parties herein, provide electrical energy to operate the signal, all at the Nation's expense.

f. Upon completion of the Project, invoice the State for 50% of the construction cost, currently estimated at \$290,000.00

g. Grant the State rights-of-entry access outside the State's right-of-way as required to perform maintenance of the project.

## **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements; provided herein. However, any provisions for maintenance, access and electrical energy shall be perpetual. This Agreement may be cancelled at any time prior to the award of a Project construction contract, upon thirty-days (30) written notice to either party. It is understood and agreed that, in the event the Nation cancels this Agreement, the State shall in no way be obligated to provide or pay for electrical energy to operate the signal.

2. The State assumes no financial obligation of liability under this Agreement. The Nation assumes full responsibility for design, plans, specification, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. The Nation will require its contractors to name the State and ADOT as an additional insured in the contractor's insurance policies. The Nation will also require its contractors to name the State and ADOT as an additional indemnitee in the Nation's contracts with its contractors. It is understood and agreed that the State's participation is confined to securing federal aid, and that any damages arising from carrying out, in the respect, the terms of this Agreement or any modification hereof, shall be solely the liability of the Nation's and the Nation hereby agrees to save and hold harmless and indemnify from loss the State and any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of negligent performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employee, the Nation's or any of its independent contractors. Costs incurred by the State any of its departments, agencies, offices or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys fee.

3. The cost of construction and construction engineering work covered by this Agreement is to be borne by FHWA and the Nation, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the Nation agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 616E  
Phoenix, Arizona 85007  
(602) 712-7525  
(602) 712-7424 Fax

Fort McDowell Yavapai Nation  
Attn: Alfonso L. Rodriguez, Director  
Community & Economic Development  
Division  
P.O. Box 17779  
Fountain Hills, AZ 85269  
(480) 789-7746  
(480) 789-7798 Fax

9. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

10. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue

to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

11. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first above written.

**FORT MCDOWELL YAVAPAI NATION**

**STATE OF ARIZONA**

Department of Transportation

By

  
RAPHAEL BEAR, President  
Fort McDowell Yavapai Nation

By

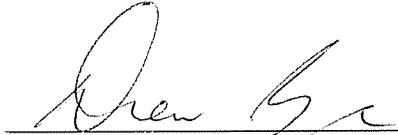
  
MICHAEL MANTHEY  
State Traffic Engineer

**ATTORNEY APPROVAL FORM FOR THE FORT MCDOWELL YAVAPAI NATION**

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the FORT MCDOWELL YAVAPAI NATION, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the Nation under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 6<sup>th</sup> day of March, 2007.

A handwritten signature in black ink, appearing to read "Drew Ryce", is written over a horizontal line.

Drew Ryce, Attorney



# Fort McDowell Yavapai Nation

P.O. Box 17779, Fountain Hills, AZ 85269

Phone (480) 837-5121

Fax (480) 837-1630

President Raphael Bear  
Council Member Paul Russell

Vice President Bernadine Burnette  
Council Member Owen Doka

Treasurer Pamela Mott  
Council Secretary Pansy Thomas

## RESOLUTION APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN FORT MCDOWELL YAVAPAI NATION AND THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION FOR THE CONSTRUCTION, MAINTENANCE AND ELECTRICITY COSTS OF TRAFFIC SIGNAL AT SR 87 (BEELINE HIGHWAY) AND TOH VEE ROAD

Resolution No. Ft. McD. 2007 – 010

WHEREAS, The Fort McDowell Yavapai Nation Tribal Council ("Tribal Council") is the governing body of the Fort McDowell Yavapai Nation ("Nation"); and,

WHEREAS, The Fort McDowell Yavapai Nation and the State of Arizona ("State") have entered into Intergovernmental Agreement (IGA's) in the past for the construction and maintenance of traffic signals within the Nation's boundaries, and,

WHEREAS, The Nation has determined that as a result of increased usage of Toh Vee Road by guest, community members, Tribal members and employees to enter onto or exit off of SR 87, that traffic signal is required to protect the traveling public using SR 87 and Toh Vee Road; and,

WHEREAS, The Fort McDowell Yavapai Nation will pay all engineering, equipment and construction costs for the project estimated to be approximately \$290,000.00 and will be subsequently reimbursed by the State through the Department of Transportation for 50% of the construction costs, and,

WHEREAS, This new IGA also will allow for the addition of new traffic signals in the future by letter without having to enter into new IGA's and;

WHEREAS, The State will be responsible to maintain the equipment.

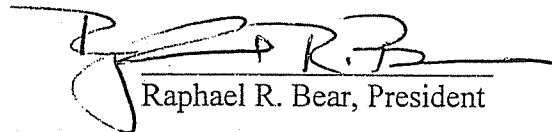
**NOW THEREFORE BE IT RESOLVED** that the Fort McDowell Yavapai Nation Tribal Council hereby agrees to enter into the Intergovernmental Agreement with the State of Arizona for the construction, maintenance and electricity costs of traffic signals within the Nation as identified in the agreement which is attached hereto and marked Exhibit A

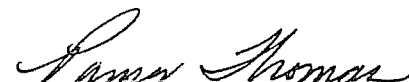
**BE IT FURTHER RESOLVED** that the Tribal Council President, or his designee, is authorized to execute this agreement and sign all necessary documents related to this agreement.

**Resolution No. Ft. McD. 2007- /0 continued. Toh Vee Rd. IGA**


**CERTIFICATION**

Pursuant to the authority contained in Article V, Section 13(A)(5),(15), & (23) and (B)(1)&(2) of the Constitution of the Fort McDowell Yavapai Nation ratified by the Tribe on October 19, 1999 and approved by the Secretary of the Interior on November 12, 1999, the foregoing Resolution No. 2007- 0/0 was adopted this 6 day of March, 2007 at a Special Council Meeting held at Fort McDowell at which a quorum of 4 members were present, 1 absent, by a vote of 2 for and 1 opposed and 0 abstained.

  
Raphael R. Bear, President

  
Pansy Thomas, Secretary

Date: 3/6/07

<p>TERRY GODDARD Attorney General</p>	<p> <b>OFFICE OF THE ATTORNEY GENERAL</b> STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan.Davis@azag.gov</p>
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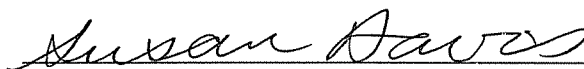
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR07-0112TRN (**JPA 06-122-I**), an Agreement between public agencies, i.e., The State of Arizona and Fort McDowell Yavapai Nation, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED:      March 28, 2007

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:1006305  
Attachment